IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 626 of 2000

IN

ARBITRATION PETITION NO.126 OF 2000

M/s.Syntrex Corporation a registered partnership, having its office at 14, Neel Tarang, 210 Veer Savarkar Marg, Mahim,Mumbai 400016. .. Appellant

versus

1. Rajkumar Keshardev, Member of Stock Exchange, Mumbai having his address at Keshardev House, three Bungalows, 56, Rani Sati Marg, Malad(E), Mumbai 400 097.

2. The Stock Exchange Mumbai a recognised Stock Excahnge) having its office at Jeejeebhoy Towers, Dalal Street, Fort, Mumbai 400 023. .. Respondents

...

Mr.Simil Purohit with Ms.Sophia i/b M & M Legal Venture for the appellant.

None for the respondent though served.

CORAM : R.M.S. KHANDEPARKAR

AND D.G.KARNIK, JJ

RESERVED ON : 19th June 2007.

DELIVERED ON : 13th July 2007.

ORAL JUDGEMENT (Per D.G. KARNIK, J)

1. This appeal is directed against the judgement and order dated 2nd May 2000 passed by a learned Single Judge of this Court dismissing the appellant's petition under section 24 of the Arbitration and Conciliation Act 1996 (for short "the Arbitration Act")

2. The respondent was a member of the Bombay Stock Exchange (for short "BSE") and was declared as a defaulter on 29th September 1998. The appellant made a claim on the respondent for Rs. 3 lakhs plus interest of Rs.59,503/- by making a reference to the BSE on 21st December 1998. According to the appellant, he had given to the respondent a sum of Rs.3 lakhs on account of "Vyaj Badla Transactions" which were not repaid by him. As the respondent denied the liability the dispute between the petitioner and the respondent arising out of the claim made by the appellant was referred to an Arbitral Tribunal in accordance with the bye-laws of the BSE. By an unanimous award dated 5th January 2002, the Arbitral Tribunal dismissed the reference

on the ground that there were no contract notes and that the alleged Vyaj Badla Transactions were not done through the Bolt i.e. on the computerised trading system of the BSe and therefore the reference could not be entertained under the bye laws of the BSE. The Arbitral Tribunal also noted that the balance sheet of the appellant showed that the amount of Rs. 3 lakhs was paid by the appellant to the respondent as loan and advance and therefore, the money due from the respondent was not in respect of the dealings made not on the Exchange and the claim was therefore not subject to the Rules, Bye-laws and Regulations of the BSE.

3. Being aggrieved by the award of the Arbitral Tribunal, the appellant filed in this Court an application under section 34 of the Arbitration Act for setting aside the award. By the impugned order, the learned Single Judge held that the two findings of fact recorded by the Arbitral Tribunal viz (i) that there were no contract notes and (ii) that the transactions did not fall within the Rules, Bye-laws and Regulations of the Stock Exchange could not challenge in an application under section 34 of the Arbitration Act. The learned Single Judge held that

the transactions being in the nature of the Vyaj Badla Transactions fell outside the jurisdiction of the Arbitral Tribunal under the bye laws of the BSE. The learned Single Judge therefore dismissed the application. That judgement is impugned in the present appeal.

4. Learned Counsel for the appellant strongly relying upon the decision of this Court in Hemendra V. Shah Vs. Stock Exchange, Bombay & Ors. reported in 1995(2) Mh.L.J. 770 submitted that the Arbitral Tribunal as well as the learned Single Judge erred in holding that the Arbitral Tribunal had no jurisdiction because there was no written contract notes. Our attention was particularly drawn to observations made in paragraph no.17 to 19 of the decision in Hemendra V. Shah (Supra) wherein the Court specifically repelled the contention that the arbitration proceedings could not be conducted in the absence of the contract notes. The Court held that Bye-law 226(A) of the BSE provides that all claims arising out of or in relation to all contracts referred to in sub clause (a) the parties shall be deemed to have agreed that they are subject to Arbitration in accordance with the Rules, Bye-laws,

Regulations and Usage of the BSE. It was therefore held that the Rules, Bye-laws and Regulations would govern the contracts and dealings even if the written contract notes were not issued.

5. In our view, the decision of this Court in Hemendra Shah's case is not applicable to the facts of the case. In that case it was only held that the transactions referred to sub clause (a) of bye law no.226 i.e. transactions between a member and a non member in respect of dealings on the Exchange would be governed by the Arbitration under the rules and bye laws of the BSE even if contract notes were not issued. The Court did not hold that any dispute between the parties, even in respect of transactions not done on the BOLT (i.e. on the trading system of the Exchange) would also be governed by the Arbitration in accordance with the rules and bye laws of the exchange. Obviously private transactions between a member and non member of the BSE cannot be governed by the bye laws of the Exchange. In the present case, the Arbitral Tribunal has recorded a finding of fact that the Vyaj Badla Transactions were not done through the BOLT i.e. computerised on line trading system of the BSE and the finding is accepted

by the learned Single Judge. The disputed Vyaj Badla Transactions were held to be private transactions relating to the private dealings between the appellant and the respondent and not the transactions in respect of the dealings in the securities on the Exchange. The finding that the transactions were not done on the Bolt i.e. on the Exchange is purely a finding of fact which is not in any way shown to be perverse. No arbitration proceedings in accordance with the rules and bye-laws of the BSE could therefore be held in respect of those transactions.

6. There is no merit in the appeal which is hereby dismissed with no order as to costs.

(R.M.S. KHANDEPARKAR, J)

(D.G. KARNIK, J)